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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,833	12/12/2003	Sam Zhadanov		2176

7590 03/02/2006

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EXAMINER

FETSUGA, ROBERT M

ART UNIT PAPER NUMBER

3751

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/733,833	ZHADANOV ET AL.	
	Examiner	Art Unit	
	Robert M. Fetsuga	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/25/05 & 02/06/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,8-11,13-16 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,12,17,18,22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The proposed amendment to the claims filed February 06, 2006 has not been entered as not complying with 37 CFR 1.121(c).

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the language added to the end of claim 1 (and similarly added to claims 18 and 22), and "means" set forth in claim 5, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant did not substantively address the objection to claim 5 in either of the responses filed November 25, 2005 or February 06, 2006.

3. Claims 1, 12 and 17 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a scrubbing element attached to a hand shower by a connecting element, does not reasonably provide enablement for a scrubbing element attached to a hand shower. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Applicant did not substantively address this rejection in either of the responses filed November 25, 2005 or February 06, 2006.

4. Claims 1, 4-7, 12, 17, 18, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites a scrubbing element "being attached" to a showerhead. Claims 18 and 22 recite similar subject matter. Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. The only attachment disclosed is a snap-fit (pg. 8 par. 1). There is no teaching of how to accomplish such a attachment.

Applicant argues at page 11 of the response filed November 25, 2005 a snap-fit "is well known as an attachment". The examiner can not agree absent some form of evidence in support of this position.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-6, 12, 17, 18, 22 and 23, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Henkin et al.

The Henkin et al. (Henkin) reference discloses a hand shower comprising: a handle 202; a showerhead 204 including openings 404; a scrubbing element 500; a connecting element 330 including an opening 422; and means 510,514, as claimed. Re claim 6, the Henkin connecting means is elastic and is therefore considered to be "snappable".

Applicant argues at pages 13-14 of the response filed November 25, 2005 the connecting element 330 and the scrubbing element 500 of Henkin have the same diameter. The examiner can

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not agree and notes Figs. 2 and 11, for example, of the Henkin disclosure. Applicant argues at page 14 of the response the connecting element 330 of Henkin does not include a plurality of openings. The examiner can not agree and notes the disclosure of openings 422 associated with the Henkin hand shower.

7. Claims 1, 4-7, 12 and 17, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gentry et al. and Vosbikian et al.

The Gentry et al. (Gentry) reference discloses a hand shower comprising: a handle 28; a showerhead 24 including openings 30; a scrubbing element 40; a connecting element 34; and means (col. 3 lns. 14-18), as claimed. Re claim 6, the Gentry connecting element (col. 3 lns. 38-40) appears to meet applicants' disclosed structure and is therefore considered to be "snappable". Re claim 7, the Gentry means can include a holding member (col. 3 lns. 49-59). Therefore, Gentry teaches all claimed elements except for the relative size of the scrubbing element.

Although the scrubbing element of the Gentry hand implement may not be larger, as claimed, attention is directed to the Vosbikian et al. (Vosbikian) reference which discloses an analogous hand implement which further includes a larger scrubbing element (Figs. 1 and 2). Therefore, in consideration

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of Vosbikian, it would have been obvious to one of ordinary skill in the hand implement art to associate a relatively larger scrubbing element with the Gentry hand implement in order to increase scrubbing surface area. Re claim 5, Vosbikian also teaches means (col. 3 lns. 23-40) apparently more like that disclosed by applicant.

Applicant argues at pages 14-15 of the response deficiencies of the references individually, however, nonobviousness can not be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. It is again noted Vosbikian teaches one how to attach a scrubbing element to a hand-held implement.

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1, 4-7 and 12 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 4-7 and 13 of copending Application No. 10/733,834. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented. The difference in intended use wording between claim 1 of each application concerning a "hand shower" and "pull-out faucet" does not appreciably alter the claim scope, especially considering the respective specification and drawings.

Applicant did not substantively address this rejection in either of the responses filed November 25, 2005 or February 06, 2006.

10. Claims 18, 22 and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18, 23 and 24 of copending

Application No. 10/733,834 in view of Vosbikian. To associate a relatively larger scrubbing element with the hand implement of patent claim 18 would have been obvious to one of ordinary skill in the art in consideration of Vosbikian analogous to the discussion supra in paragraph 7.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The terminal disclaimer filed November 25, 2005 (and resubmitted February 06, 2006) has been disapproved as not stating the amount of ownership.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. Applicant's remarks have been fully considered and have been previously addressed.

13. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

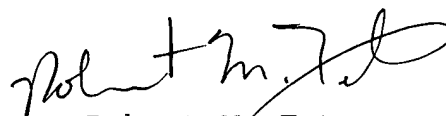
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', is written over the typed name and title.

Robert M. Fetsuga
Primary Examiner
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